Supreme Court, U.S.
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NO. 80-520

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MICHAEL F. JARVILL,

Petitioner,

v.

THE CITY OF EUGENE,
ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

BRIEF FOR RESPONDENTS IN OPPOSITION

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CONSTITUTION OF THE STATE OF OREGON

Article I, Section 32 4

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I. STATEMENT OF THE CASE

The taxing system Petitioner attacks supports a free parking program for the central downtown district (The Downtown Development District) of the City of Eugene. The city, by ordinance, taxes professionals, businesses and property owners within the district to finance and administer this program.

The boundaries of the district were determined by economic and physical attributes of the downtown area and the property and businesses located there. The conditions and problems unique to the area include those relating to transportation, density, difficulty of access, declining value, loss of consumer patronage, aesthetic depreciation and degeneration of physical plant. The city's decision to tax those persons within the district to implement the free parking program for the district was rationally based.

II. SUMMARY OF ARGUMENT

The City's decision to tax persons within the Downtown Development District to support a free parking program for the district was reasonable. This Court should defer to this local, fiscal decision. No federal right, fundamental interest or suspect classification is involved and the rational basis test should be applied. Those persons to be taxed were reasonably determined by reference to common conditions and problems unique to the downtown core district and the fact that this group of persons is defined geographically does not render the classification unconstitutional. In fact, this taxing system has been determined to satisfy the more stringent uniformity requirements of the Oregon Constitution. The petition for certiorari should be denied.

III. ARGUMENT

A. There Is No Evidentiary Basis for Petitioner's Claim of Differential Treatment.

The trial court record is devoid of evidence establishing that persons outside the district in the same or similar circumstances as those inside the district are subjected to differential treatment. Defendants offered no such evidence

at trial and no such evidence exists. To the contrary, the trial record contains the testimony of expert and lay witnesses as well as documentary evidence establishing the circumstances which differentiate between professionals, businesses and property owners inside and outside of the District.

B. The City's Taxing Plan Meets the Rational Basis Test.

Nearly a century of Supreme Court adjudication has established the principle that a tax law will be upheld against an equal protection attack as long as its classification is "'founded upon a reasonable distinction.'" *Kahn v. Shevin,* 416 U.S. 351, 355, 94 S.Ct. 1734, 1737, 40 L.Ed.2d 189 (1974), *quoting Allied Stores v. Bowers,* 358 U.S. 522, 528, 79 S.Ct. 437, 441, 3 L.Ed.2d 480. The Court has long held and recently reiterated the rule that "'[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperilled, the states have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.'" *Id. quoting Lehnhauser v. Lake Shore Auto Parts Co.,* 410 U.S. 356, 359, 93 S.Ct. 1001, 1003, 35 L.Ed.2d 351 (1972).

Petitioner points to no fundamental interest or suspect classification which might call for strict scrutiny under the equal protection clause. For this reason and also because the Supreme Court has traditionally deferred to states to allow local development of fiscal policy, the applicable standard of review requires only that the taxing system be shown to bear some rational relationship to a legitimate purpose. *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 40, 93 S.Ct. 1278, 1300, 36 L.Ed.2d 16 (1973). In *Rodriguez,* the Court acknowledged that this long standing rule was well founded in that the court lacks "both the expertise and familiarity with local problems necessary to the making of wise decisions with respect to the raising and disposition of public revenues." *Id.* at 42, 93 S.Ct. at 1301.

Petitioner raises no issues which have not been long settled by this Court. The mere fact that this program affects only professionals, businesses and property owners in the downtown area of the city does not render it unconstitutional. In the recent case of *Holt Civic Club v. City of Tuscaloosa,* 439

U.S. 60, 99 S.Ct. 383, 390, 58 L.Ed.2d 292 (1978) where the Supreme Court decided that a city could enforce its ordinances outside its territory, the court reaffirmed its statement in the earlier case of *Fort Smith Light Co. v. Paving Dist.*, 274 U.S. 387, 391, 47 S.Ct. 595, 597, 71 L.Ed. 1112 (1927) that "the Fourteenth Amendment does not prohibit legislation merely because it is special, or limited in its application to a particular geographical or political subdivision of the state."

C. The City's Taxing Plan Meets the More Stringent State Constitutional Requirement of Uniformity.

Perhaps the most compelling reason for denying review in this case is that the Constitution of the State of Oregon contains a section, Article I, Section 32, that is more stringent than the equal protection clause of the Fourteenth Amendment regarding uniformity of taxation. That section reads:

> "No tax or duty shall be imposed without the consent of the people or their representatives in the legislative assembly; and all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax."

The Oregon Supreme Court, the Oregon Court of Appeals and the trial judge who ruled in this case all found that this explicit requirement of the Oregon Constitution was met by the classifications in this case. Respondents have satisfied a state constitutional requirement that is more onerous than any imposed by the Fourteenth Amendment Equal Protection Clause.

D. Those Who Are Taxed Do Benefit from the Taxes They Pay.

The second question Petitioner presents for review misstates the facts in this case. The direct benefits of the taxes in question are enjoyed by all who park free in the district including those who are taxed. The only prohibition on those taxed is that they not be in their place of business, professional office or motel or hotel at the same time that their vehicle is parked free in the District. When they leave

their own premises they are free to park in the District along with others. In any event, it is not required that each taxpayer receive a special benefit for the tax imposed. *St. Louis and Southwest Railway v. Nattin*, 277 U.S. 157, 48 S.Ct. 438, 72 L.Ed. 830 (1928). *See, City of Pittsburgh v. Alco Parking Corporation*, 417 U.S. 369, 94 S.Ct. 2291, 41 L.Ed.2d 132 (1974) (tax on commercial parking lots to raise revenue because of traffic related problems upheld against equal protection and due process attacks).

E. Due Process Objections Were Not Raised Below Nor Do They Have Merit.

Petitioner did not raise the issue of whether he was deprived of property without an opportunity to vote in the Court below. Petition for Writ at 13-14. The facts stated by Petitioner establish that the taxpayer's representatives, the city council members, levied the tax. There is no constitutional requirement that citizens vote directly on every tax measure.

CONCLUSION

This case does not merit review by this Court. The tax law Petitioner seeks to have declared unconstitutional contains rational distinctions based upon conditions and problems unique to the downtown core district. No issue is raised which would differentiate this case from the myriad of cases in which local tax laws have been upheld against similar attacks for nearly a century. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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By: _____

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